IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 2997 OF 1986

Syndicate Bank .. Plaintiffs.

V/s.

Messrs. Ansari Brothers .. Defendants.

Mr.A.S.Doctor i/by M/s. Kanga & Co.for the Plaintiffs.

CORAM : S. A. BOBDE, J.

DATED : 25th JANUARY, 2007.

P.C.:

. In this summary suit, the plaintiffs had taken out a summons for judgment on 29.08.1988. This court granted leave to defend on depositing a sum of Rs.4 lakhs within six weeks from that date. The court permitted the defendant to file a written statement of defence within six weeks thereafter.

2. The learned counsel for the plaintiffs pointed out that the defendants have not deposited the amount of Rs.four lakhs nor they have filed the written statement. He, therefore, submits that the plaintiffs is entitled to a decree under Order 37, Rule 3, sub-rule (6)(b) and also consequentially under order 8, rule 10 for failure

to file a written statement. Today, the suit is listed for orders for want of written statement. In the plaint, which is uncontroverted, the plaintiffs have prayed for a decree in the sum of Rs. 7,86,859.40/- with further interest on Rs.4,90,187.30/- at the rate of 19.5% per annum from the date of filing the suit and till payment and or realisation. The suit is based on money advanced by the plaintiffs bank in pursuance of the letter of credit opened by the plaintiff bank at the request of the defendants. According to the plaintiffs, the beneficiary of the letter of credit operated the letter of credit and negotiated the documents thereunder. The plaintiffs bank duly presented the documents to the defendants and called upon them to make payment; but the defendants failed and neglected to do so. The documents pertaining to the letter of credit are at Exh.‘A’. Exh.‘A’ is the letter of credit. The bank acting on the construction of the defendants, issued a letter dated 11.04.1983 to the Tokai Bank Ltd., informed them of the irrevocable letter of credit No. 039068345 for Yen 11795000/- in favour of Nissho Iwai Corporation, on behalf of the defendants. After honouring the transaction, the bank presented the import bills and documents for Japanese Yen 1,18,02,953/- equivalent to Rs.4,95,922.40 ps, for payment. However, the defendants also pointed out to the bank that they

had incurred expenses of a sum of Rs. 8302.60 for insuring the said goods and demanded the payment of said sum of Rs.4,95,922.40 ps., with interest at the rate of 18% per annum from 15th August, 1983 to 28th August, 1983. This amount was not paid by the defendants. The bank, therefore, issued a notice by registered post A.D. dated 3rd February, 1986, through the banks' Advocate. The defendants having not complied with the notice, the bank has filed the suit.

3. Having perused the letter of credit and the notice and the other documents pertaining to the transaction in question, there is no reason to doubt the plaintiffs claim. In view of the Order 8 rule 10 of the code of civil procedure, I consider it appropriate to decree the plaintiffs claim in the sum of Rs.7,86,859.40 ps. as per the particulars of claim Exh.'G' to the plaint with further interest on Rs.4,90,187.30 ps. at the rate of 19.5% per annum from the date of filing of the suit till payment and /or realisation and the cost of the suit.

4. Decree be drawn up accordingly.

(S.A.BOBDE,J.)

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